

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,)
Inc. d/b/a Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

CC Docket No. 00-65

**RHYTHMS NETCONNECTIONS INC.
COMMENTS IN OPPOSITION
TO SBC'S APPLICATION FOR SECTION 271 AUTHORITY**

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SUMMARY

SBC's application, even as supplemented, remains deficient, particularly with respect to DSL loop provisioning, OSS and line sharing issues. Barely two weeks passed between the filing of the Justice Department's March 20 *ex parte* and April 5, when SBC refiled its Texas 271 application. Only by the greatest of miracles would it have been possible in that brief interval to transform an application that DOJ had found to be deficient (even as supplemented) into an application that fully met all of the criteria in the 14-point checklist. Clearly, no such miraculous transformation has taken place.

SBC's refiled application fails to demonstrate that it is providing non-discriminatory access to DSL-capable loops. Moreover, the available evidence suggests that SBC is not taking the steps necessary to implement line sharing by the Commission's deadline. Rather, SBC is erecting new and substantial obstacles in the path of data CLECs at the same time that it is giving its "fully separate" advanced services affiliate, ASI, preferential treatment. The most recent example occurred today at the line sharing meeting in Chicago. There, SBC (which has steadfastly maintained unreasonable cabling requirements which must be satisfied before a CLEC is allowed to place its first order for line sharing UNEs) announced that it would grandfather all in-place splitter cabling. This concession is valuable to one party, the only CLEC with in-place splitter cabling: ASI.

On April 4, 5, and 6 (the day SBC resubmitted its application, and the days immediately preceding and following the resubmission), SBC announced that it had taken, or would soon take, a number of measures, including ASI's commitment to order 280 unbundled loops per month using the same interfaces as non-affiliated CLECs. Most, if not all, of these actions appear to have been initiated in response to criticisms leveled against SBC in comments on its

initial application. The timing is, indeed, curious: if SBC were firmly committed to demonstrating actual compliance with the competitive checklist, surely some of those measures would have been announced sooner – before it became apparent that its initial application would be denied by the Commission. Moreover, many of the announcements are nothing more than promises of future action. This Commission has repeatedly, and appropriately, cautioned the BOCs that their 271 applications will be judged on the basis of actual performance, not mere promises of future performance.

Any evaluation of SBC's application which takes into account its actual performance, particularly with respect to the critical competitive issues surrounding the provisioning of DSL loops and the implementation of line sharing, can only lead to one conclusion: SBC has not made the required showings. The Commission must therefore deny SBC's refiled Texas 271 application.

LIST OF ATTACHMENTS

DOCUMENT	SUBJECT MATTER	LOCATION
<u>Attachment A:</u> Supplemental Affidavit of Ann M. Lopez	Negotiation of Line Sharing Amendment	¶¶ 4-7
<u>Attachment A:</u> Supplemental Affidavit of Ann M. Lopez	SBC's Plans and Policies for Line Sharing	¶¶ 8-15
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<u>Attachment A:</u> Supplemental Affidavit of Ann M. Lopez	Cooperative Acceptance Testing	¶¶ 17-18
<u>Attachment A:</u> Supplemental Affidavit of Ann M. Lopez	Enhancement and Uniformity of OSS Interfaces	¶¶ 19-25
<u>Attachment B:</u> April 7, 2000 Letter from Craig Brown to Kristin Ohlson	Rhythms' Position on Line Sharing Negotiations	Att. B, pp. 1-2
<u>Attachment C:</u> April 13, 2000 Letter from Kristin Ohlson to Craig Brown	SBC Position on Line Sharing Negotiations	Att. C, pp. 1-2
<u>Attachment D:</u> April 21, 2000 Letter from C. Brown to K. Ohlson	Rhythms' Response to SBC April 13 Letter	Att. D

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**RHYTHMS NETCONNECTIONS INC.
COMMENTS IN OPPOSITION**

Rhythms NetConnections Inc., and Rhythms Links Inc. (formerly ACI Corp.)
(collectively “Rhythms”) hereby submit these comments opposing the refiled application of SBC Communications Inc., Southwestern Bell Telephone Company (“SWBT”) and Southwestern Bell Communications Services, Inc. (collectively, “SBC”) for authority to provide in-region, interLATA services in Texas.

INTRODUCTION

In its comments and reply comments on SBC’s initial Texas 271 application, Rhythms highlighted the numerous and substantial deficiencies in SBC’s evidentiary showing. These included: (1) SBC’s failure to demonstrate that SWBT is providing nondiscriminatory access to Operations Support Systems (“OSS”) as required under checklist item two; (2) SBC’s failure to demonstrate that SWBT is providing nondiscriminatory access to unbundled xDSL-capable loops; and (3) SBC’s failure to demonstrate that its advanced services subsidiary, ASI, is adequately separate and fully operational. Numerous other commenters, including the U.S. Department of Justice (“DOJ”), filed comments in opposition to SBC’s application in January

and February of this year. Just days prior to SBC's application withdrawal, DOJ filed further comments in an *ex parte* letter dated March 20th,¹ detailing how SBC had failed to demonstrate that it had met its checklist obligations with respect to DSL. In the few short days before it refiled, SBC has failed to provide any meaningful evidence that it has met those obligations.

Since the close of the comment cycle on the initial application, limited progress has been made in some areas. Nevertheless, with respect to DSL issues, SBC's application remains deficient. For instance, SBC still has not fully implemented the Rhythms/Covad arbitration award. In early April, when SBC refiled the application, there was a flurry of additional activity, which may have been initiated for the sole purpose of answering some of the criticisms leveled against the initial application.² However, SBC has taken several other actions that have erected new obstacles in the path of CLECs. Several of those actions are detailed in these comments and the accompanying exhibits. Whatever motive SBC may have for taking these actions, they make clear that the Texas local exchange market is not yet irrevocably open to competition. On the present record, even as supplemented, SBC has not carried its burden and its application should be denied.

¹ Letter, dated March 20, 2000, from Donald J. Russell, DOJ, to Magalie Salas, Secretary, FCC ("DOJ March 20 *ex parte*").

² On April 4, 2000, SWBT invited CLECs to a "Pre-Order/Order Data Integration Workshop" to be held in Chicago on June 21. Ham Supp. Aff. Attachment E-2. On April 5, 2000, SBC announced that it had retained GE Global Exchange Services ("GE") and would, upon CLEC request, fund a two-week consulting engagement "to assist CLECs in defining the appropriate architecture and strategy for using and/or integrating SWBT's interfaces." (Letter, dated April 5, 2000, from James D. Ellis, SBC to Magalie Salas, Secretary, FCC) ("*SBC/SWBT April 5 ex parte*") at 7. On April 5, 2000, CLECs were first given access to loop qualification information from CPSOS. Brown Supp. Aff. ¶ 18. On April 6, 2000 SWBT notified Texas CLECs of the availability of two optional amendments to the Texas 271 Agreement to incorporate UNE Remand and line sharing provisions. Brown Supp. Aff. ¶ 22. Beginning on April 6, 2000, ASI began ordering 280 unbundled DSL-capable loops per month via the same ASR process used by SWBT to provision unbundled loops for CLECs. Brown Supp. Aff. ¶ 22.

DISCUSSION

I. SBC HAS FAILED TO DEMONSTRATE COMPLIANCE WITH THE COMMISSION'S LINE SHARING REQUIREMENTS.

a. SBC's Compliance on Line Sharing Must Be Evaluated in Order to Determine Checklist Compliance.

In its April 5 *ex parte* submission, SBC recognizes very clearly the Commission's "June deadline" for implementation of line sharing and indicates that it is taking the necessary steps to meet that deadline.³ This statement by SBC suggests that the deficiencies in its earlier application will be remedied by line sharing implementation. Even if that were the case (which, as we discuss below, it is not), the facts do not support SBC's suggestion that line sharing will be implemented in Texas by the Commission's June 6th deadline.

Not only has SBC erected unreasonable barriers to scalable CLEC deployment of line sharing by June 6th, it has refused to negotiate the required line sharing amendments ordered by the Commission. SBC cannot demonstrate that it is providing, or even will provide, line sharing as a UNE in accordance with the Commission's rules and thus SBC cannot demonstrate that it has met its Section 271 obligation to provide nondiscriminatory access to all Section 251 UNEs. Furthermore, SBC's staunch refusal to provide line sharing over fiber-fed DLC will seriously limit and undermine the numerous public interest benefits articulated by this Commission in its *Line Sharing Order*. Accordingly, the Commission must deny SBC's 271 application.

b. SBC Has Not Demonstrated that Either Line Sharing Architecture Will be Provided in Texas by June 6.

Notwithstanding the claims made in its application, SBC has adopted a 13 state implementation schedule that will not meet the Commission's June 6 implementation date. While it is true that SWBT is in the midst of line sharing trials in Texas and, based on these

trials, has a target date of May 29, 2000 for implementation of line sharing in Texas,⁴ SBC has not demonstrated that it will provide line sharing to CLECs by June 6th.

Rather, despite the substantial implementation period afforded ILECs by this Commission, as discussed below, SBC has failed to put in place measures necessary to afford full implementation of the line sharing provisions on or before the June 6th deadline. Instead, carriers opting to use their own splitter for line sharing face unreasonable and discriminatory provisioning intervals that virtually ensure that SBC will be unable to substantially meet the June 6 deadline. For carriers seeking to use SBC-owned splitters, the SBC implementation schedule precludes line sharing in over 80 percent of SBC central offices as of the mandatory June 6th deadline. Such flagrant disregard of this Commission's rules must not be countenanced.

i. CLEC-owned Splitters

Where CLECs opt to deploy their own splitters for line sharing, SBC-imposed requirements and timeframes prevent timely, scaleable entry by June 6th. While Mr. Cruz correctly indicates that CLECs began submitting orders to SWBT for line sharing during the week of March 5, 2000,⁵ he fails to notify the Commission that even after placing such orders, CLECs cannot obtain line sharing except under extremely unreasonable conditions and lengthy provisioning intervals.

First, SBC requires CLECs to provide two dedicated 100-pair groups (one each for voice and data) to be reserved and placed in inventory for line sharing.⁶ This requirement effectively imposes a minimum requirement on CLECs seeking to obtain line sharing. Thus, each and every

³ *SBC/SWBT April 5 ex parte* at 17 (“SBC is taking the necessary steps for timely implementation of line sharing before the Commission’s June deadline, as the Auinbauh and Cruz Supplemental Affidavits explain”).

⁴ Cruz Supp. Aff. at ¶ 17.

⁵ Cruz Supp. Aff. at ¶ 15.

⁶ Supplemental Affidavit of Ann M. Lopez in Support of Comments Filed by Rhythms, Attachment A (“Rhythms Aff.”) at ¶ 12.

CLEC seeking to provide service from a given SBC central office must obtain enough facilities to serve 100 customers, just to place a single order. The impacts on CLECs are obvious. CLECs have sought a reduction of the minimum from 100 pair to 25 or 50 pair without success. SBC has refused to grant any non-affiliated CLEC a variance from its cabling requirements (e.g., a request to use two 50-pair cables in place of one of the 100-pair cables mandated by SBC).⁷ However, today at the line sharing meeting in Chicago, SBC granted the variance requested by its affiliate, ASI, by agreeing to “grandfather” in-place splitter cabling arrangements – arrangements which only ASI has.⁸ If SBC’s rules are nondiscriminatory, its variance policy clearly is not.

By establishing a 100 pair minimum for non-affiliated CLECs, SWBT has diminished substantially the possibility that CLECs can use existing inventory for the line sharing reserve. Instead, CLECs typically must go through the lengthy and expensive “augmentation” process to obtain the two 100-pair tie cables SBC has decreed as a minimum. The new cables must then be installed and inventoried, and the block on the MDF or IDF restenciled.⁹ Each of these steps is subject to availability of SWBT resources and only when each step is completed can a CLEC submit an order for line sharing, indicating the pair to be used for data and the pair to be used for voice.

To add insult to injury, on April 18, SBC clarified that its line sharing rollout schedule will apply to all “augments,” which it defines broadly to include the addition of existing CLEC

⁷ Rhythms Aff. at ¶ 12.

⁸ *Id.*

⁹ SBC recently advised CLECs that non-standard fields must be used in the line-sharing ordering process to identify these pairs. Rhythms Aff. at ¶ 14. This approach, which SBC alone among the BOCs has implemented, necessitates a great deal of development work on the part of CLECs, that may need to be “undone” later if the OBF adopts a different standard nomenclature. SBC could have avoided imposing this extra burden on CLECs (and the need for restenciling the IDF or MDF blocks and updating the Cable Facilities Assignment (“CFA”) inventory) if it had simply built a translation table in the CFA database containing the CLECs’ existing line designations. *Id.*

tie cables to the SBC databases for inventory and stenciling the bays.¹⁰ Thus, even if a CLEC is using its own splitter and using its existing cable, it is going to have to request an “augment” that will be provided subject to the intervals in the rollout schedule or the collocation augment intervals applicable in a given state.¹¹ The effect of this requirement is to substantially delay CLECs’ ability to obtain line sharing by unreasonably tying line sharing provisioning intervals to collocation provisioning with no technical basis for doing so.

ii. SBC-Owned Splitters

For CLECs relying on SBC to deploy the splitter there is little hope that they can obtain line sharing by the June 6th deadline. As part of the SWBT trials in Texas, a separate deployment schedule was being developed for SBC-owned splitter architecture.¹² On April 5, however, SBC announced a roll out schedule for the 13 SBC states.¹³ The schedule identified when each central office would be equipped with an SBC-owned splitter and would be ready for line sharing.¹⁴ Under the April 5 schedule, only a small fraction of the central offices in Texas would be ready for line sharing by June 6. Then, on April 12, SBC announced a revised rollout schedule for line sharing using SBC-owned splitters that calls for approximately one-sixth of SBC’s central offices to be ready for line sharing by June 6; a total of 33% by June 20; a total of 66% by July 27 with the remaining central offices ready by the end of August.¹⁵ In the April 12 announcement, SBC made clear that this schedule was only a target and it assumed the availability of sufficient resources and equipment.¹⁶

¹⁰ See Cruz Supp. Aff. at ¶ 41: “In the SWBT region where the DS0 interconnection pairs are currently inventoried in the TIRKS database, CLECs will be required to establish inventory and order by designating the pairs as inventoried in SWITCH even if they are converting existing pairs for lines haring.”

¹¹ Rhythms Aff. at ¶ 12.

¹² Cruz Supp. Aff. at ¶ 18.

¹³ Rhythms Aff. at ¶ 9.

¹⁴ Rhythms Aff. at ¶ 9.

¹⁵ Rhythms Aff. at ¶ 10.

¹⁶ Rhythms Aff. at ¶ 10.

As a result of SBC's conduct, it is very unlikely that wholesale (or even substantial or partial) implementation of line sharing by either architecture will be available in Texas by the Commission's June 6 deadline.

c. SBC Has Not Engaged in Serious Negotiations with CLECs for Line Sharing

Not only will SBC fail to meet the June 6 implementation date, but it also has been unwilling to engage in meaningful negotiations with CLECs concerning line sharing.¹⁷ By way of example:

- SBC insists that CLECs obtain amendments to their interconnection agreements before ordering line sharing on a commercial basis.¹⁸

SBC refuses to engage in multi-party negotiations.¹⁹

Although Rhythms objected to SBC's positions on these issues, it nevertheless attempted to negotiate contract amendments to begin line sharing on June 6, 2000, as provided for in the Commission's *Line Sharing Order*.²⁰ Despite Rhythms' November 18, 1999 request to meet with SBC to negotiate line-sharing amendments for the SBC states, it was not until March 30 that the parties finally met.²¹

At the March 30 meeting, SBC agreed to negotiate interim language for line sharing, which would be subject to true-up and could be put in place prior to June 6, 2000. SBC took the position, however, that it would only be willing to sign interim language identical to the contract language that it had proposed in the California line sharing proceeding. Such a position not only

¹⁷ See Attachments B and D hereto (Letters dated April 7, 2000 and April 21, 2000, from Craig J. Brown of Rhythms to Kristin Ohlson of SBC; see also Rhythms Aff. at ¶ 5.

¹⁸ See Attachment B (April 7, 2000 Letter) at 1; see also Rhythms Aff. at ¶ 4.

¹⁹ *Id.*

²⁰ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 98-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*") at ¶¶ 160-161, 170.

²¹ Rhythms Aff. at ¶ 5.

fails to constitute “negotiation”, but lacks any credible “good faith”, as the California language was unreasonable and inconsistent with the *Line Sharing Order* on numerous points, including issues related to augment intervals, network architecture, liability, and line sharing on fiber loops.²² The “negotiations” between Rhythms and SBC were decidedly one-sided, as it quickly became clear that SBC was unwilling to engage in meaningful negotiations on any material term related to line sharing and that SBC would lonely be willing to sign interim language identical to the contract language it proposed in the California line sharing proceeding.²³ On April 13, SBC wrote to Rhythms proposing a “stand alone amendment” to the interconnection agreement; however, the language was identical to the California language previously proposed by SBC, except that provisions unrelated to line sharing had been removed.²⁴ SBC has steadfastly refused to discuss the line sharing language that Rhythms proposed in the California line sharing proceeding, language that is appropriate for use in all SBC states.²⁵ SBC persists in this refusal, despite Rhythms’ willingness to incorporate language making it clear that the terms of the amendment are subject to true up and will have no precedential effect on current or subsequent arbitrations or other proceedings.²⁶

Because of SBC’s refusal to negotiate in good faith a line sharing amendment to its interconnection agreements with Rhythms, as required by this Commission’s rules, it is likely

²² See Attachment B (April 7, 2000 Letter) at 1; see also Rhythms Aff. at ¶ 5.

²³ See Attachment B (April 7, 2000 Letter) at 1. SBC’s “my way or the highway” approach was confirmed again on April 6 by telephone. *Id.* The Supplemental Affidavit of Michael C. Auinbauh also is consistent with SBC’s negotiating posture on line sharing. Compare ¶ 13 for other UNEs (stating that a “CLEC could request to negotiate a unique amendment to their interconnection agreement to incorporate the new FCC requirements”) with ¶¶ 8-9 describing the options available to Texas CLECs for line-sharing (*i.e.*, the SWBT T2A Amendment; expedited resolution by the Texas PUC; or the 13-state generic agreement, the terms of which are virtually identical to the T2A Amendment).

²⁴ See Attachment D (April 21 Letter from Craig Brown to Kristin Ohlson).

²⁵ See Attachment D (April 21 Letter from Craig Brown to Kristin Ohlson); see also Rhythms Aff. at ¶ 5.

²⁶ See Attachment B (April 7 Letter from Craig Brown to Kristin Ohlson); see also Rhythms Aff. at ¶ 6.

that Rhythms will have to request arbitration in several SBC states and it is clear that such arbitrations are unlikely to be resolved by June 6.

d. SBC's Refusal to Provide Line Sharing Over Loops With Fiber-fed DLCs Contravenes its Unbundling Obligations

SBC has made it clear both in discussions and in its proposed contract language that it will not offer line sharing on fiber-fed loops.²⁷ SBC's latest filing confirms that SBC's transfer of DSLAMs and packet switching to ASI will virtually eliminate all possibility for CLECs to line-share on loops with fiber-fed DLCs.²⁸ As Mr. Auinbauh makes clear:

[only if SWBT owns] a DSLAM located at a remote terminal site *and* the CLEC is unable to obtain copper facilities to provision a DSL service, *and* SWBT does not permit the CLEC to collocate its own DSLAM in the remote terminal, SWBT will unbundle and provide access to the SWBT packet switching used in this situation.²⁹

Since SWBT will own neither the packet switching nor the DSLAM in the Project Pronto architecture—ASI will—line sharing will cease to be possible on an increasing number of loops. Given its impending rollout of Project Pronto this summer, this issue is of the utmost importance to CLECs, as opportunities for line sharing will disappear almost as rapidly as central offices are equipped to implement line sharing.³⁰

The effect of SBC's position, coupled with its aggressive deployment of "Project Pronto" will not only undermine the policy and public interest goals articulated in the Commission's *Line Sharing Order*, but will also foreclose the very competition that must be demonstrated to achieve compliance with the Act, and in particular Section 271. This Commission sought the broadest possible competitive deployment of advanced services, particularly to residential customers,

²⁷ Rhythms Aff. at ¶ 15.

²⁸ Supplemental Affidavit of Michael C. Auinbauh at ¶15.

²⁹ Auinbauh Supp. Aff. at ¶ 15 (emphasis added).

³⁰ Rhythms concurs in the views expressed in the Initial Joint Comments of ALTS and the CLEC Coalition being filed today concerning Project Pronto.

through its requirement of line sharing. In every way, SBC's position with respect to fiber-fed loops fails to ensure that this goal will be realized in Texas. Without competition, 271 cannot be met; without line sharing the public interest is disserved.

II. SBC HAS FAILED TO DEMONSTRATE THAT IT IS PROVIDING NONDISCRIMINATORY ACCESS TO DSL-CAPABLE LOOPS.

a. SBC's Performance in Provisioning DSL-capable Loops Remains Discriminatory.

SBC's poor performance in provisioning DSL-capable loops—both analog xDSL-capable loops and ISDN BRI loops—was extensively briefed by Rhythms, other data CLECs and the Justice Department in filings on SBC's initial Texas application.³¹ As DOJ observed as late as March 20th, "SBC's performance data for January 2000 (which became available after the Department's evaluation was filed) confirm that the poor performance reflected in the December 1999 data was no aberration."³² The same is plainly true with respect to SBC's February performance, summarized in the Chapman Supplemental Affidavit. As a result of the serious deficiencies in performance on DSL loops, SBC plainly fails the showings required by this Commission to demonstrate checklist compliance for loops, including DSL loops.³³

i. xDSL-capable analog loops.

With regard to SBC's performance on xDSL capable loops, there is little new to recommend SBC's latest application; SBC's performance continues to fall far short of the necessary showing to garner 271 approval. Of the five categories of performance measures

³¹ Rhythms notes, as has DOJ, that the reliability of SWBT's performance data (particularly recent data that has not been reconciled) is unclear. *See, e.g.*, DOJ March 20, 2000 ex parte at 1,10. Rhythms does not, by submitting these comments on SWBT's February data, waive its right to challenge the accuracy of that data in future comments in this proceeding or in other proceedings.

³² DOJ March 20 ex parte, at 2.

³³ *See* Comments of Rhythms NetConnections Inc. on SBC's initial Texas 271 Application at 44-54; *In the Matter of Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) ("BA-NY 271 Order") at ¶ 330 (setting forth requirement that ILECs demonstrate that they are providing xDSL-capable loops in all future 271 applications).

specific to xDSL loops, SBC was in parity for only three of the five categories from September 1999 through February 2000.³⁴ SWBT has failed to demonstrate nondiscriminatory provision of xDSL-capable loops in the other two categories (missed installation appointments and installation quality of xDSL loops provisioned).

With respect to missed installation appointments, SBC asserts that its “root cause” analysis revealed that the single greatest contributor to this out of parity condition—one which occurred in over 60% of the cases—was “lack of facilities.”³⁵ Far from assuring better performance, SBC instead relies on unsubstantiated promises of future performance, contending that “this situation will be greatly alleviated when line sharing becomes available to CLECs”³⁶ and the result will be a true “apples-to-apples” comparison.³⁷ SBC states that it intends, upon full implementation of line sharing, to measure its provision of the high frequency portion of the loop (HFPL) to its affiliate, ASI, as well as to CLECs, and to provide nondiscriminatory access to both the HFPL and to stand-alone loops. However, as discussed above, such a showing can only be made in the distant future and will come far too late to rescue SBC from the deficient performance now before the Commission for evaluation. Moreover, until line sharing has been fully implemented, the discrimination in favor of ASI will persist, to the disadvantage of SBC’s competitors in the advanced services market.

With respect to the installation quality of xDSL loops provisioned, SBC asserts that SWBT’s failure to provide parity performance for three of the past six months “is directly attributable to the fact that many CLECs have elected to utilize non-standard xDSL

³⁴ Chapman Supp. Aff. at ¶ 21.

³⁵ Chapman Supp. Aff. at ¶ 35.

³⁶ Chapman Supp. Aff. at ¶ 36.

³⁷ Chapman Supp. Aff. at ¶ 36.

technologies.”³⁸ This argument highlights serious flaws in SBC’s commitment to serve its data CLEC competitors. First, SBC appears to be once again asserting the tired and unavailing arguments against any technology it has not chosen to deploy. What SBC appears to conceive of as “non-standard” xDSL technologies—those different than the ones SBC deploys—are the very innovative products that a competitive market seeks to encourage and that this Commission has expressly ordered SBC to enable. Second, CLECs who deploy so-called “non-standard” xDSL technologies do so in an effort to serve the requirements of customers who desire symmetric DSL services or greater bandwidth or who are simply located beyond the reach of the limited “industry-standard” line-shared ADSL offering of SBC and its affiliate. This Commission has made clear that SWBT should be held to the same performance measure for loop quality regardless of the technology or services that will be provided over the loop. Furthermore, so long as carriers deploy technologies that meet this Commission’s requirements for deployment, they need not have been approved by an industry standards body.³⁹

SWBT has clearly failed to demonstrate parity in meeting installation appointments and in providing xDSL-capable loops of a quality that provides CLECs a meaningful opportunity to compete. Its assurances that line sharing will “greatly alleviate” the problem cannot be substituted for evidence of actual performance.⁴⁰ The Commission should also reject SBC’s effort to blame the victim by having “trouble reports attributable to the use of non-standard

³⁸ Chapman Supp. Aff. at ¶ 41.

³⁹ The Commission has soundly and repeatedly rejected the ILECs’ position that only industry-standard loop technologies are acceptable for deployment. “Non-standard” loop technologies are presumed acceptable for deployment if approved by the FCC or any state commission or if successfully deployed by any carrier without “significantly degrading” the performance of other services. See *Advanced Services First Report and Order and NPRM*, ¶¶ 66, 67; *Line Sharing Order*, ¶ 195.

⁴⁰ *In the Matter of Application by Bell Atlantic-New York for Authorization under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) (“BA-NY 271 Order”) ¶ 37.

xDSL technologies . . . excluded from SWBT's performance measurement."⁴¹ SBC has in no way demonstrated that the trouble reports are unwarranted nor has it substantiated that these reports are "attributable" in some fashion to the CLECs' deployment over the loop. Accordingly, these arguments must be rejected for the puffery that they are.

This Commission first ordered ILECs to provide xDSL capable loops in August 1996; yet despite this clear requirement, SBC has refused to embrace its obligations.⁴² As a result, SBC's record for provisioning of xDSL-capable loops continues to be deplorable. Rather than remedying its performance, SBC instead attempts yet again to foreclose meaningful review of its actual performance. But whining about the very competition the Act and this Commission's orders seek to encourage cannot salvage its failing record. Accordingly, the Commission should reject SBC's application until such time as SBC cannot demonstrate, without excuse, parity performance in provisioning xDSL capable loops.

ii. ISDN BRI loops.

The lack of parity is particularly apparent in the case of BRI loops. SWBT acknowledges a problem in this area, but claims that shortfalls in BRI performance are due to "industry-wide technological problems."⁴³ However, those problems could be resolved quickly and easily if SWBT were willing to cooperate with CLECs, but SWBT has refused to even discuss a readily-available solution with Rhythms.⁴⁴

Once again, rather than stepping up to its obligations, SBC blames its failure to meet performance measures applicable to unbundled BRI loops on the need to implement manual work-arounds to address incompatibility between the DISC*S pair gain system used by SBC and

⁴¹ Chapman Supp. Aff. at ¶ 41.

⁴² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996), ¶ 380; 47 C.F.R. § 51.319(a).

⁴³ *SBC/SWBT April 5 ex parte* at 14.

the CLECs' IDSL technology.⁴⁵ SBC describes industry discussions, identifies solutions in the development stage, and concludes that it should not be penalized for the efforts it makes to accommodate CLECs' IDSL offerings.⁴⁶

However, SBC omits any mention of Rhythms' suggestion that SBC adopt another solution. Marconi, the manufacturer of SBC's DISC*S pair-gain equipment, does make a card that is compatible with Rhythms' DSLAMs, but SBC refuses to even discuss replacing the existing incompatible cards with compatible ones so as to resolve the incompatibility between Rhythms' DSLAM and the DISC*S pair gain system.⁴⁷

SBC's flat refusal to even discuss the replacement of incompatible DISC*S cards, evidences its failure to accommodate competitors and thus SBC should be held fully accountable for its failure to meet the performance measures applicable to BRI loops. As in the case of line-sharing, SBC has chosen the path that would impose the greatest cost and delay on CLECs. Just as SWBT should not be penalized for good faith efforts to resolve incompatibility problems, it should not be rewarded for its refusal to consider an alternate course that it could readily implement at little or no cost.

b. SWBT Has Failed to Deliver Cooperative Acceptance Testing as Promised.

Cooperative testing presents a textbook example of why this Commission cannot accept SBC's promises of future performance in lieu of actual demonstrations of checklist compliance. SBC notes SWBT's December 16, 1999 commitment to the Texas PUC to make cooperative acceptance testing available to requesting CLECs.⁴⁸ Despite this promise, however, Rhythms' efforts to obtain loop acceptance testing on the service order completion date have been

⁴⁴ Rhythms Aff. at ¶ 16.

⁴⁵ Chapman Supp. Aff. at ¶¶ 52-62.

⁴⁶ *Id.*

⁴⁷ Rhythms Aff. at ¶ 16.

unsatisfactory. Rhythms began asking SWBT to provide loop acceptance testing in September of last year.⁴⁹ Despite repeated requests from Rhythms for acceptance testing, SWBT refused to provide it until early February 2000.⁵⁰ Even though SWBT made its commitment to the Texas PUC over four months ago, SWBT appears to have made little or no effort to inform its employees of their obligation to provide loop acceptance testing, or to train them in the appropriate procedures. Rhythms has found that whenever it orders DSL-capable loops in a new area, cooperative testing simply does not occur unless and until Rhythms undertakes to educate SWBT personnel on their obligation to provide cooperative testing and then to provide SWBT's employees with on-the-job training on test procedures.⁵¹

III. SBC HAS FAILED TO DEMONSTRATE COMPLIANCE WITH THE REQUIREMENT TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS.

In order to meet its Section 271 obligation, SBC must demonstrate that its OSS systems for xDSL services meet the requirements of the Act and this Commission's orders. In the *SBC/Ameritech Merger Order*,⁵² the Commission ordered SBC to develop and deploy enhancements to the operations support system ("OSS") interfaces for pre-ordering and ordering xDSL and other Advanced Services components ("Advanced Services OSS")⁵³ and to develop and deploy uniform, electronic OSS throughout the thirteen-state combined SBC/Ameritech region ("Uniform and Enhanced OSS").⁵⁴ SBC is to develop, in consultation with CLECs, a plan

⁴⁸ Chapman Supp. Aff. at ¶ 89.

⁴⁹ See Comments of Rhythms NetConnections Inc. on SBC's initial Texas 271 Application at 38-39 and accompanying Lopez Aff. at ¶ 25.

⁵⁰ *Id.*

⁵¹ Rhythms Aff. at ¶ 18.

⁵² *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 3109d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 1012 of the Commission's Rules, CC Docket No. 98-141, FCC 99-279 (rel. October 8, 1999) ("Merger Order").*

⁵³ *Merger Order*, Appendix C ("Conditions") at ¶ 15.

⁵⁴ *Merger Order*, Appendix C ("Conditions") at ¶ 25.

of record (“POR”) detailing both the present mode of operations (“PMO”) and future mode of operations (“FMO”) for access to its OSS.⁵⁵ These commitments have not been met.

Accordingly, SBC has failed to implement meaningful OSS changes for xDSL, and SBC may fail to deliver on its promise to enhance OSS interfaces “in lockstep,” thereby erecting substantial barriers to entry into the xDSL market in its region. As a result the Commission cannot find that SBC has met its checklist obligation to provide nondiscriminatory OSS.

Specifically, when SBC and CLECs met in the first collaborative session, SBC indicated that the scope of the discussion there would be limited to enhancements to DataGate and EDI for preordering of xDSL and other Advanced Services and enhancements to EDI for ordering. SBC refused to discuss any changes to graphical user interfaces (GUIs) such as LEX or Verigate in the Advanced Services OSS collaborative. The prospect that SBC would not enhance LEX or Verigate (interfaces typically used by new entrants and by smaller CLECs without the back office systems necessary to use EDI and Datagate) to include preorder and ordering for xDSL and other advanced services was disturbing, because it would exclude new entrants from the xDSL market. The discussion in the Advanced Services OSS collaborative was concluded by SBC agreeing that enhancements made in EDI and Datagate would be kept “in lockstep” and made available through the LEX and Verigate interfaces, which were within the scope of the Uniform and Enhanced OSS POR.⁵⁶

In the most recent collaborative session on the Uniform and Enhanced OSS POR, held April 18 and 19 in Chicago, Rhythms and other CLECs expressed concern that SBC’s timelines for the completion of the Uniform and Enhanced OSS are too long, and that, unless those

⁵⁵ *Merger Order*, Appendix C (“Conditions”) at ¶ 28.

⁵⁶ Rhythms Aff. at ¶ 22; *see also* Notification of Final Status of Advanced Services OSS Plan of Record filed by Rhythms and the other participating CLECs on April 3, 2000 in CC Docket No. 98-141 at 22: “Keeping Verigate and LEX in synch with Datagate and EDI: SBC agreed to this item.”

timelines are substantially accelerated (by perhaps six or eight months) it will not be possible to keep Verigate and LEX “in synch” with DataGate and EDI, despite SBC’s commitment to maintaining a “lockstep” approach to enhancements. This issue remains unresolved.

Furthermore, recent discussions in the Uniform and Enhanced OSS POR collaborative indicate that SBC may not deliver on its commitment to develop and deploy a single “uniform” OSS throughout its thirteen-state region. The *Merger Order* allows for some variation from state to state to accommodate “regulatory” or “product specific” variation. Instead of providing true parity and non-discrimination, SBC appears to be moving to exploit this potential loophole to develop multiple OSS “versions” that may vary considerably from state to state within the SBC region.⁵⁷ If SBC is successful in this effort, CLECs who have already undertaken the substantial effort of developing application-to-application EDI interfaces for preordering or ordering may be forced to incur the expense of redesigning their software to accommodate substantial variations in the so-called “uniform” SBC OSS.

IV. SBC’S “SEPARATE SUBSIDIARY” IS NEITHER SUFFICIENTLY SEPARATE NOR FULLY OPERATIONAL.

SBC once again claims that its separate affiliate is fully operational and that it meets the Commission’s requirements for demonstrating nondiscriminatory access to loops for advanced services under the NY 271 Order.⁵⁸ As SBC is fully aware, the Commission expressly stated that its *Merger Order* did not constitute a finding that the advanced services subsidiary created pursuant would, even when fully operational, satisfy the requirements of Section 271.⁵⁹

As long as ASI engages in true line-sharing with SBC, while competitors have no ability to do the same and are relegated to a surrogate line-sharing discount, there is no basis for the

⁵⁷ Rhythms Aff. at ¶ 24.

⁵⁸ SBC April 5 *ex parte* at 16-17.

Commission to conclude that the nondiscrimination requirement of Section 271 has been satisfied. Similarly, the undertaking by ASI, which began on April 6, 2000 to order 280 unbundled loops per month through the same LSR process employed by CLECs⁶⁰ does not, at this time, suffice to demonstrate that SWBT “is providing” loops on a nondiscriminatory basis. Such a demonstration cannot be made until several months worth of performance data has been gathered and evaluated.

Additionally, there is evidence of other discrimination in favor of ASI by SBC. CLECs were excluded altogether until April 5, 2000 from access to CPSOS, an interface used by SWBT in joint marketing with ASI. Even now, it is not clear that CLECs have full and nondiscriminatory access to CPSOS, an integrated pre-ordering and ordering system, because the access they have is only to “loop pre-qualification information.”⁶¹

CONCLUSION

For the foregoing reasons, as well as those articulated in the Comments of Rhythms and other data CLECs on SBC’s initial 271 application for Texas, the Commission should reject SBC’s refiled application for authority under Section 271. Despite progress in some areas, SBC has still failed to demonstrate that it has met its public interest and checklist obligations to all

⁵⁹ “Nor do the Conditions reflect or constitute any determination or standard regarding SBC’s compliance or non-compliance with 47 U.S.C. §§ 251, 252, 271 or 272.” *Merger Order*, Appendix C (“Conditions”) at 1.

⁶⁰ Brown Supp. Aff. at ¶ 22.

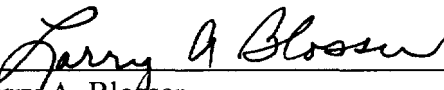
⁶¹ Brown Supp. Aff. at ¶ 18.

competitive carriers, including data CLECs using DSL technologies to provide advanced services.

Respectfully submitted,

RHYTHMS NETCONNECTIONS INC.

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Dated: April 26, 2000

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Application by SBC Communications, Inc.,)	
Southwestern Bell Telephone Company,)	CC Docket No. 00-65
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Texas)	

**SUPPLEMENTAL AFFIDAVIT OF ANN M. LOPEZ
IN SUPPORT OF COMMENTS FILED BY RHYTHMS**

Ann M. Lopez, being of lawful age declares as follows:

1. My name is Ann M. Lopez. I am a program manager for Rhythms Links Inc.
(“Rhythms”). I am the same Ann M. Lopez who submitted affidavits in support of
Rhythms’ comments and reply comments on SBC’s initial application for Section 271
authority in Texas (CC Docket No. 00-4).

I. Introduction

2. The purpose of this affidavit is to discuss some of the problems that Rhythms has
encountered in its efforts to provide digital subscriber line (“xDSL”) services in
Texas over the past several months. These problems have arisen in several contexts,
including Rhythms’ efforts to negotiate a line sharing amendment to its
interconnection agreement with SBC, as well as the “Advanced Services OSS” and
“Uniform and Enhanced OSS” collaborative proceedings initiated pursuant to the
Commission’s order approving the merger of SBC and Ameritech.
3. In my January 31, 2000 joint affidavit with Fred Baros, we provided descriptions of
Rhythms and its need to obtain interconnection, collocation and unbundled access to

network elements, including xDSL-capable loops to provision xDSL services. We also described SWBT's OSS interfaces and unbundled loop provisioning systems for pre-ordering, ordering, and provisioning unbundled loops to competitive local exchange carriers ("CLECs"). In this supplemental affidavit I address recent developments, including the status of SBC's development and deployment of OSS enhancements necessary to support the high frequency loop spectrum or "line-sharing" UNE, and SBC's efforts to develop and deploy "uniform" and "enhanced" OSS throughout the combined thirteen-state region.

II. Rhythms' Efforts to Negotiate a Line-Sharing Amendment to Its Interconnection Agreement with SWBT

4. SBC has insisted that CLECs obtain amendments to their interconnection agreements before ordering line sharing on a commercial basis. Despite the fact that the Rhythms/SWBT interconnection agreement itself was the product of a joint arbitration involving Rhythms and another CLEC (Covad Communications Company), and despite the fact that virtually all of the issues involved in implementing line sharing are common to most data CLECs, SBC has refused to engage in multi-party negotiations.
5. On November 18, 1999, the date the Commission announced the *Line Sharing* decision, Rhythms requested a meeting with SBC to negotiate line-sharing amendments for the SBC states. On March 30, SBC and Rhythms met for the first time in San Francisco. I was among those representing Rhythms at that meeting. At the March 30 meeting, SBC agreed to negotiate interim language for line sharing, which would be subject to true up and could be put in place prior to June 6, 2000. However, SBC took the position that it would only be willing to sign interim

language identical to the contract language that it had proposed in the California line sharing proceeding. That language was unreasonable and inconsistent with the *Line Sharing Order* on numerous points, including issues related to augment intervals, network architecture, liability, and line sharing on fiber loops. SBC has steadfastly refused to consider the line sharing language that Rhythms proposed in the California line sharing proceeding, language that is appropriate for use in all SBC states.

6. Following the March 30 meeting, Rhythms continued its efforts to obtain a mutually satisfactory interim line sharing amendment with SBC, as reflected in the exchange of correspondence between Rhythms attorney Craig Brown and SBC attorney Kristin Ohlson (Attachments B, C, and D to Rhythms' Comments). SBC was unwilling to discuss any changes to its proposed language on any of the issues raised in the California line sharing arbitration, despite the fact that Rhythms indicated its willingness to include language making it clear that the terms of the amendment would be subject to true up and would have no precedential effect on current or subsequent arbitrations or proceedings.
7. SBC's unwillingness to negotiate in good faith, and its refusal to consider any line sharing terms and conditions other than its own, has become increasingly clear over the past month. The Supplemental Affidavit of Michael C. Auinbauh is consistent with SBC's negotiating posture on line sharing. In paragraph 13 Mr. Auinbauh describes CLEC options for other UNEs, and states that a "CLEC could request to negotiate a unique amendment to their interconnection agreement to incorporate the new FCC requirements." The possibility of a "unique amendment" is omitted from Mr. Auinbauh's description (in paragraphs 8-9 of the same affidavit) describing the

options available to Texas CLECs for line sharing. As the affidavit makes clear, Texas CLECs wishing to line share with SWBT can choose from two agreements with virtually identical terms – SWBT’s T2A Amendment and the SBC 13-state generic agreement.

III. SBC’s Plans and Policies for Line Sharing

8. The Supplemental Affidavit of Rod Cruz, at paragraph 17, states that SWBT's target date to implement line sharing in Texas is May 29, 2000, using a CLEC-owned splitter network architecture. Mr. Cruz further states that the deployment schedule for an SBC-owned splitter architecture is being developed as part of the region-wide line sharing trial and that SWBT hopes to publish that schedule in early April. Id.
9. On April 5, SBC announced a roll out schedule for the 13 SBC states. The schedule identified when each central office would be equipped with an SBC-owned splitter and was ready for line sharing. Under this schedule, only a small fraction (approximately six percent) of the central offices in Texas would have been ready for line sharing by June 6.
10. On April 12, SBC announced a revised rollout schedule that calls for 1/6 of its central offices to be ready for line sharing (SBC-owned splitter) by June 6, a total of 33% by June 20, a total of 66% by July 27, and the rest by the end of August. However, SBC made clear that this is only a target schedule and assumes sufficient resources and equipment.
11. On April 18, 2000, SBC clarified that the revised schedule released on April 12 also applies to the other architecture (CLEC-owned splitter) in those cases where a CLEC requests a collocation augment. SBC is defining “augments” very broadly, so that it

will be difficult to implement the CLEC-owned splitter architecture without a CLEC-requested augment. SBC's definition of augment includes the principal tasks involved the conversion of existing CLEC tie cable pairs for line sharing, as described in paragraphs 41-42 of the Supplemental Affidavit of Rod Cruz. Those tasks include identification of cable pairs currently inventoried in the TIRKS database, designating the pairs as inventoried in the SWITCH database, and stenciling the bays.

12. SBC requires CLECs to provide two dedicated 100-pair groups (one each for voice and data) to be reserved and placed into inventory for line sharing. CLECs have attempted, without success, to persuade SBC that reserving 25 or 50 wire pairs for line sharing should be sufficient at the outset. CLECs have sought variances from the 100 pair requirement to allow, for example, two 50-pair cables to be used in place of one of the 100-pair cables. SBC's affiliate, ASI, has also requested a variance, because its existing cabling does not comply with the SBC requirements. At the line sharing meeting in Chicago on April 26, 2000, SBC announced that it will grandfather all cabling in place. At this time, only ASI has in-place cabling, so only ASI will benefit from this latest SBC action. Meanwhile, Rhythms and other CLECs must still comply with the requirement to inventory and reserve two 100-pair cables for line sharing. This substantially diminishes the possibility that CLECs can use existing tie cable inventory to establish the required line-sharing reserve, and correspondingly increases the likelihood that CLECs will require collocation augments before they can commence line sharing in any given SWBT central office. A CLEC can request an augment through the normal collocation augment process, subject to the collocation augment intervals in that state, or it can request that the

augment be done in the central office at the same time that SBC is installing its own splitter.

13. As noted above, SBC's implementation schedule is not firm, but only a target, and assumes that it will have sufficient resources and equipment available to accomplish the necessary tasks, including collocation augments. By establishing a 100-pair (times two) tie cable reserve requirement, requiring changes in inventory and restenciling of bays, and broadly defining "augments," SBC has substantially diminished the possibility that even those CLECs who deploy their own splitters can begin line sharing in any given central office before SBC completes deployment of its own splitters in that same central office.
14. SBC has notified CLECs that orders for line sharing must identify the pairs to be used, and has specified that non-standard fields be used to identify the specific pairs. To the best of my knowledge, SBC is the only BOC to adopt this approach, one which will require CLECs to expend significant resources to develop the necessary back office systems. Until the Ordering and Billing Forum ("OBF") adopts standard fields for this purpose, there will be a risk that the industry standard field identifiers will be different from the ones SBC has adopted, necessitating that the development work undertaken by CLEC be "undone" at a later date. SBC declined to implement CLECs' suggestion to adopt a simple expedient of building a translation table in the Cable Facilities Assignment ("CFA") database and in any other affected databases thereby avoiding the need to revise cable inventories, restencil MDF or IDF blocks and create ordering systems specifically designed to use the non-standard fields.

15. SBC has made it abundantly clear, both in its proposed contract language and in its discussions with Rhythms and other CLECs involved in the line sharing trial, and that it will not even consider providing line sharing over loops with fiber-fed DLCs.

IV. SWBT's Provisioning of ISDN BRI Loops

16. In the Chapman Supplemental Affidavit, at paragraphs 52-62, SWBT asserts that its failure to demonstrate parity in the provisioning of unbundled ISDN BRI loops is attributable to "industry-wide technological problems." Rhythms' DSLAMs are not compatible with the DISC*S pair gain systems deployed by SBC. However, the incompatibility problem described by SBC can be resolved quickly and relatively inexpensively without the need for a redesign of CLEC terminal equipment to incorporate buffering, or the "work-arounds" SBC has been performing. The manufacturer of SBC's DISC*S pair gain systems, Marconi, manufactures a card that is compatible with Rhythms' DSLAMs. If SBC would agree to replace cards in the affected DISC*S systems with these other, compatible, cards, the incompatibility problem would be resolved. However, SBC has refused to even discuss this alternative solution with Rhythms.

V. Cooperative Acceptance Testing

17. In the Chapman Supplemental Affidavit, at paragraph 89, SWBT refers to the commitment it made to the Texas PUC, at the December 16, 1999 open meeting, to make cooperative acceptance testing available to requesting CLECs. Rhythms had been seeking loop acceptance testing from SWBT since September of last year, when it was first able to begin placing loop orders in Texas under its interim

interconnection agreement with SWBT. Despite repeated requests from Rhythms for acceptance testing, SWBT refused to provide it until early February 2000.

18. Although SWBT finally agreed to conduct cooperative acceptance testing with Rhythms, it appears that SWBT has made little or no effort to inform its employees of their obligation to provide such testing, or to train those employees in the appropriate procedures. Rhythms has found that whenever it orders DSL-capable loops in a new area, cooperative acceptance testing does not occur unless and until Rhythms undertakes to educate SWBT personnel on their obligation to provide such testing and then provides on-the-job training in cooperative acceptance test procedures to those same SWBT employees.

VI. Enhancement and Uniformity of OSS Interfaces

19. As Mr. Baros and I explained in our January 31, 2000, joint affidavit in support of Rhythms' initial comments in CC Docket No. 00-4, SWBT currently has several interfaces to its Operations Support Systems ("OSS"). These interfaces include the DataGate and Electronic Data Interchange ("EDI") interfaces. Before a carrier can use DataGate or EDI, a carrier must develop comparable software applications on its side of the interface. Development of such specialized software applications is a time-consuming and expensive endeavor, so EDI is not widely used by CLECs. Since January, Rhythms has completed development of an EDI interface for ordering xDSL capable loops, and has deployed it in the Pacific Bell and SWBT states. Work is underway at Rhythms on an EDI interface to SBC's pre-ordering systems.
20. SBC currently offers two GUIs for use by CLECs – Verigate for pre-ordering and LEX for ordering. Rhythms, like many other CLECs, is dependent upon Verigate for

certain pre-order functions, pending completion of its development of an EDI pre-ordering interface. In the first session of the Advanced Services OSS collaborative, on January 19, 2000, SBC indicated that its Plan of Record (“POR”) encompassed only DataGate and EDI, the two interfaces expressly identified in the Commission’s SBC/Ameritech Merger Order. SBC advised CLECs that discussion in the Advanced Services collaborative would be limited to enhancements in DataGate and EDI, and that any issues related to enhancements of Verigate and LEX were beyond the scope of the POR. SBC’s position was both disappointing and disturbing to Rhythms and other CLECs in attendance at the Advanced Services Collaborative. Unless SBC continues to support Verigate and LEX (the “GUI” interfaces) and to enhance those interfaces, it will pre-empt CLECs from competing with SBC. This is true because most CLECs do not possess the resources to develop EDI alternatives and others, including Rhythms, that are in the process of developing EDI simply are not finished.

21. CLECs, including Rhythms, present at the January 19 meeting requested SBC to make a firm commitment that it would not discontinue support for either Verigate or LEX, and that SBC would enhance Verigate and LEX in the same manner as DataGate and EDI. SBC representatives initially made no promises that it would do either. Later, SBC agreed that enhancements made in EDI and DataGate would be kept “in lockstep” and made available through the LEX and Verigate GUI interfaces, and that those interfaces would be within the scope of the Uniform and Enhanced OSS POR.
22. At a recent collaborative session on the Uniform and Enhanced OSS POR, held in Chicago on April 18 and 19, Rhythms and other CLECs expressed concern that the

timelines SBC proposed for development of the “uniform and enhanced” OSS were too long, jeopardizing the ability of SBC to keep Verigate and LEX “in synch” with DataGate and EDI. Rhythms suggested that the timelines should begin accelerated by six to nine months so that CLECs using Verigate and LEX will continue to have access to the functionalities available via EDI and DataGate, and at the same time. Rhythms advised SBC that merely providing “similar” functionality on a delayed time schedule was not consistent with SBC’s commitment to deploy “uniform” and “enhanced” OSS interfaces throughout the entire SBC region. As of today, this issue remains unresolved. The lack of resolution can be traced directly to SBC’s initial decision to address xDSL-related enhancements to DataGate and EDI in the Advanced Services POR and its refusal to discuss parallel enhancements to Verigate and LEX in the Advanced Services POR collaborative.

23. Rhythms is actively participating in the Uniform and Enhanced OSS collaborative process. It is my understanding that SBC made a commitment to the FCC, as part of the merger approval process, that it would develop and deploy a single “uniform” OSS throughout its thirteen-state region, with only limited variations necessary to accommodate regulatory or product-specific requirements in different states. However, SBC appears to be proceeding on a path that will lead to the deployment of multiple OSS “versions” that may vary considerably from state to state within the thirteen-state region.

24. When Rhythms voiced concerns about the lack of uniformity, SBC stated that it is permitted, under the FCC merger order, to take “regulatory” and “product-specific” variations into account in developing and deploying the uniform OSS. SBC appears to

be intent on exploiting what it perceives to be a significant loophole in the merger conditions, instead of complying with the spirit of the merger condition. If SBC is successful in its effort to deploy several different OSS “versions” CLECs, including Rhythms, who have already undertaken the substantial effort of developing back office systems (including application-to-application interfaces for pre-ordering or ordering) may be forced to incur the substantial additional expense of redesigning software to accommodate the variations. The greater the variations in SBC’s “uniform” OSS, the more time and effort CLECs will be required to devote to software development.

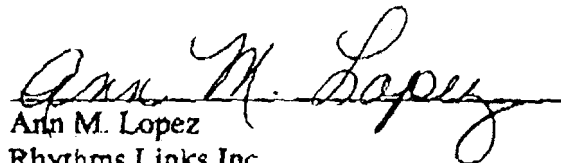
IV. Conclusion

26. The actions which SBC has taken with respect to line sharing terms and conditions, the provisioning of xDSL-capable loops (including ISDN BRI loops), cooperative loop testing, development of uniform and enhanced OSS interfaces, and its splitter cabling requirements discriminate in favor of its affiliate, ASI, and do not provide competing DSL providers a meaningful opportunity to compete with SWBT in Texas.

27. This concludes the affidavit.

AFFIDAVIT OF ANN M. LOPEZ

I, Ann M. Lopez, being of lawful age, declare under penalty of perjury that I am authorized to provide the foregoing statement on behalf of Rhythms Links Inc.; that I have read the foregoing statement and the information contained in the foregoing is true and correct to the best of my knowledge and belief.


Ann M. Lopez
Rhythms Links Inc.
Program Manager

RHYTHMS

Craig J. Brown
Assistant General Counsel

April 7, 2000

By Facsimile

Kristin A. Ohlson
Senior Counsel
Pacific Telesis Group
140 New Montgomery Street, Room 1526
San Francisco, CA 94105

Dear Kristin:

This letter confirms our telephone call yesterday, where we discussed Rhythms' efforts to negotiate line sharing amendments to its interconnection agreements with SBC. Based on our conversation, as well as our meeting last week, it is clear that SBC is unwilling to engage in meaningful negotiations on any material term related to line sharing.

In its line sharing meetings with CLECs, SBC has insisted that CLECs obtain amendments to their interconnection agreements before ordering line sharing on a commercial basis. SBC has also refused to engage in multi-party negotiations. Although Rhythms objected to SBC's positions on these issues, it agreed to try to negotiate contract amendments to begin line sharing on June 6, 2000, as provided for in the *Line Sharing Order*. As a result, Rhythms requested a meeting with SBC to negotiate line sharing amendments for the SBC states. On March 30, the parties finally met.


At the March 30 meeting, SBC agreed to negotiate interim language for line sharing, which would be subject to true up and could be put in place prior to June 6, 2000. While this was a positive development, it was tempered by SBC's suggestion that it would only be willing to sign interim language identical to the contract language that it had proposed in the California line sharing proceeding. This suggestion was confirmed in our telephone conversation yesterday.

You indicated that SBC is unwilling to move off its proposed language on any of the issues that have been raised in the California arbitration. Thus, for example, SBC refuses to modify its proposed language in any manner regarding price, provisioning intervals, alternative network architectures, provision of line sharing on non-copper loops, intervals for cable augments, or liability. In fact, you were unable to point to any substantive issue on which SBC is willing to depart from its proposed language. As we told you at the March 30 meeting, we believe that SBC's language is unreasonable and inconsistent with the *Line Sharing Order* on numerous points. Thus, SBC's current position clearly constitutes a failure to negotiate in good faith in violation of sections 251 and 252 of the Communications Act of 1934, as amended, as well as the mandates of the *Line Sharing Order*.

Rhythms has indicated its willingness to enter into language making it clear that the terms of the amendment are subject to true up and will have no precedential effect on current or subsequent arbitrations or other proceedings. As a result, it is unreasonable for SBC to insist that it will not enter into language that differs from its positions in the California arbitration.

Rhythms requests that SBC reevaluate its current position and agree to meaningful negotiations. I look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig J. Brown", with a long horizontal flourish extending to the right.

Craig J. Brown

Kristin A. Ohlson
Senior Counsel
Legal Department

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(415) 830 1420
Fax: (415) 957 0744

PACIFIC  TELESIS
Group

April 13, 2000

Via Facsimile

Craig J. Brown
Rhythms
Assistant General Counsel
6933 So. Revere Parkway
Inglewood, CO 60112-3931

Dear Mr. Brown,

This responds to your letter to me dated April 7, 2000 regarding negotiations for line sharing amendments. I strongly disagree with your statement that SBC is unwilling to engage in meaningful negotiations for a line sharing amendment. On April 6, 2000, I e-mailed a stand alone line sharing amendment for your review and have yet to receive any redline comments on it from you.

Contrary to your letter our line sharing terms and conditions are entirely consistent with the Line Sharing Order and we are willing to offer them subject to modification based on subsequent arbitrations or other regulatory proceedings. However, it's unreasonable to insist that we agree to terms that are clearly inconsistent with the Line Sharing Order; e.g., provide line sharing facilities on other than copper and then claim that we are not willing to negotiate in good faith. In addition, in response to the CLECs' requests, SBC is voluntarily offering to provide the splitter in a network architecture not even required by the Line Sharing Order.

Attached is language we would add to a line sharing amendment regarding no waiver or precedent. At your earliest convenience, please, forward to me your specific comments on the proposed amendment I sent you.

Sincerely,



Kristin Ohlson
Senior Counsel

Attachment

cc: Diane Johnson

RESERVATION OF RIGHTS

- 1.1 Nothing in this Attachment shall constitute a waiver by either Party of any positions it may have taken or will take in any pending regulatory or judicial proceeding or any subsequent interconnection agreement negotiations. This Attachment also shall not constitute a concession or admission by either Party and shall not foreclose either Party from taking any position in the future in any forum addressing any of the matters set forth herein.
- 1.2 The Parties acknowledge and agree that the provision of the HFPL and the associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission orders (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC Docket 98-147, the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98 (FCC 99-370) (rel. November 24, 1999) ("the UNE Remand Order"), or the FCC's 99-355 Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) or R.93-04-003 (Line Sharing Phase) and I.93-04-002 pending before the Public Utilities Commission of California, or any other proceeding, the Parties shall negotiate in good faith to arrive at an agreement on conforming modifications to this Appendix. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.

RHYTHMS

Craig J. Brown
Assistant General Counsel

April 21, 2000

By Facsimile and U.S. Mail
Kristin A. Ohlson
Senior Counsel
Pacific Telesis Group
140 New Montgomery Street, Room 1526
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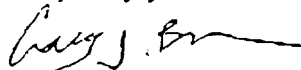
Dear Kristin:

This letter responds to your letter to me dated April 13, 2000 regarding Rhythms' negotiations with SBC for line sharing. I have reviewed the stand alone line sharing amendment that you sent me by e-mail on April 6. If you recall, Rhythms provided you detailed comments at our negotiation session on March 30 on the line sharing language that SBC proposed in the California line sharing proceeding. Based upon my review, it appears that the stand alone amendment that you sent me by e-mail is identical to the California language that you proposed earlier, except that you have omitted the provisions not related to line sharing. While this language is an improvement for that reason, I do not see any utility in providing you the same comments that we provided at the March 30 meeting.

As we discussed at the March 30 meeting, Rhythms would like SBC to consider the proposed line sharing language that was submitted by Rhythms in the California line sharing proceeding. This language is appropriate for all SBC states, including the Ameritech, SNET, and SWBT states.

As I discussed in my April 7, 2000 letter, you have indicated that SBC is not willing to modify its proposed line sharing language on any of the substantive issues that we have discussed. If SBC changes this position, we would be happy to meet again to negotiate.

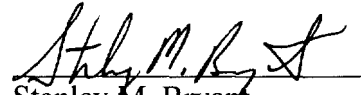
Very truly yours,



Craig J. Brown

CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 26th day of April, 2000, I have served a copy of the foregoing document via * messenger, and U.S. Mail, post prepaid to the following:


Stanley M. Bryant

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Washington, D.C. 20554

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